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11/21/2016

Ed Smith  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

Case Number: AF 09-0688

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DOUGLAS HARRIS LAW OFFICES  
F09-0688

November 18, 2016

Clerk of the Montana Supreme Court  
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Room 323, Justice Building  
215 N. Sanders  
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Helena, MT 59620-3003

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Ed Smith  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

*RE: Comment to Proposed Amendment, Rule 8.4, Montana Rules of Professional Conduct*

Dear Honorable Justices of the Montana Supreme Court:

Just like all of you, Montana lawyers take the oath of office upon admission to practice before the Supreme Court of the State of Montana and State Bar of Montana, succinctly to uphold the Constitution of the United States and the Constitution of the State of Montana and to uphold the honor and to maintain the dignity of the profession. The oaths are enclosed and bear a revisit before any action on Rule 8.4.

In 35 years of the private practice of law, I have never witnessed any lawyer engage in harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law. That is not to say, though, that a very few Montana lawyers have made some stupid comments we've heard about.

The Rules of Professional Conduct contain the aspirational Preamble of a lawyer's responsibilities that is as much a part of the Rules of Professional Conduct as Rules 1.0 through 8.5. It is alarming that Montana would even consider the additional provision of professional misconduct that is specific to harassment or discrimination. Interestingly, the proposal doesn't refer to unlawful harassment or discrimination. It speaks only to harassment or discrimination, some of which may be hurtful to some, but not unlawful.

Still, truly unlawful conduct by any Montana lawyer would not only violate the oaths of admission, the Preamble to the Rules of Professional Conduct, but also Rules 8.4(c) or (d), standing alone.

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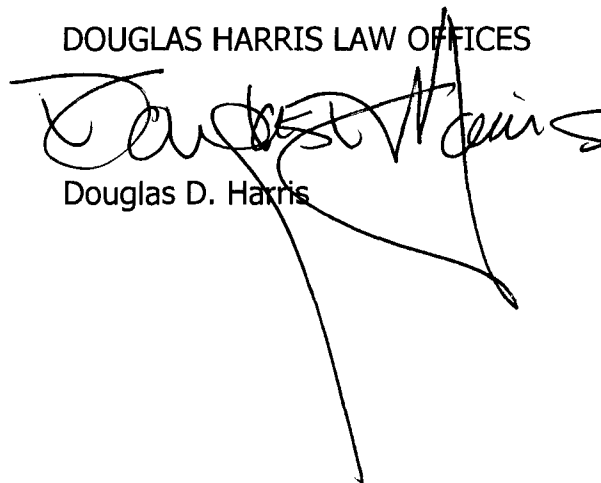
The American Bar Association does not have plenary jurisdiction over America's lawyers as does the Supreme Court of the State of Montana with its many official duties, one of which is the supervision of Montana lawyers. It is well stated, then, that the Preamble speaks to a paramount responsibility of Montana lawyers as self-regulating. As officers of the Court, we took the oaths. These being our first obligations, why do we need to be told to watch our mouths?

The addition of proposed Rule 8.4(g), in my view is redundant to Rules 8.4(c) and 8.5(d). What is more, proposed Rule 8.4(g) demeans Montana practice and treats officers of this Court as though we are elementary school students who can get into trouble for impolitic speech, or, as it seems on many college campuses who transgress due to a micro-aggression that offended someone.

With this amendment, lawful Title VII of the Civil Rights Act of 1964 "stray comments" could become disciplinary fodder. Boorish behavior, in discrimination and harassment law, doesn't always amount to unlawful behavior. It should not amount to professional misconduct, either. For the offended, it's best to slap the offender's mouth and leave it at that. That's self-regulation among lawyers, too, and it usually works.

Sincerely and respectfully,

DOUGLAS HARRIS LAW OFFICES

A handwritten signature in black ink, appearing to read "Douglas D. Harris", is written over the typed name. The signature is stylized with a large, sweeping flourish that extends downwards and to the right.

Douglas D. Harris

DDH/dmp  
Enc: As stated.

## **OATH OF ADMISSION TO THE MONTANA BAR**

I, (state your name), solemnly swear (or affirm)  
that I will support the Constitution of the United States,  
and the Constitution of the State of Montana,  
and faithfully discharge the duties  
of an attorney and counselor of law  
to the best of my knowledge and ability.  
I accept and will faithfully follow,  
the Rules of Professional Conduct  
promulgated by the Supreme Court of Montana,  
so help me God.

WRITTEN OATH OF ADMISSION  
TO THE BAR OF THE STATE OF MONTANA

I do affirm:

I will support the Constitution of the United States and the Constitution of the State of Montana;

I will maintain the respect due to the courts of justice and judicial officers;

I will not counsel or maintain any proceedings which shall appear to me to be taken in bad faith or any defense except such as I believe to be honestly debatable under the law of the land;

I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by an artifice or false statement of fact or law;

I will maintain the confidence and preserve inviolate the secrets of my client and will accept no compensation in connection with his business except from him or with his knowledge or approval;

I will be candid, fair, and courteous before the court and with other attorneys, and advance no fact prejudicial to the honor or reputation of the party or witness, unless required by the justice of the cause with which I am charged;

I shall faithfully discharge the duties of an attorney and counselor at law with fidelity to the best of my knowledge and ability;

I will strive to uphold the honor and to maintain the dignity of the profession to improve not only the law but the administration of justice, so help me God.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Clerk of the Montana Supreme Court